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Home Office

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2 Marsham Street, London SW1P 4DF
www.homeoffice.gov.uk

Rt Hon David Miliband MP

Secretary of State for Foreign and Commonwealth Affairs
King Charles Street
London
SW1A 2AH

- 5 JAN 2009

EXTRADITION OF NOSRATOLLAH TAJIK TO THE UNITED STATES

I am writing about the extradition request from the United States for Nosratollah Tajik. This case has potentially serious consequences for the UK's relations with Iran; I know that it has been the subject of correspondence between yourself and the Iranian Minister for Foreign Affairs. I thought I should formally notify you of the case before taking a decision on proceeding with extradition.

I should make clear at the outset that the Extradition Act 2003 gives me as Home Secretary very limited grounds on which to refuse an extradition request; and there is no general discretion in such cases. This position has been confirmed to me in advice from the Law Officers, a copy of which I enclose.

The background is that Tajik is a former Iranian Ambassador to Jordan whose extradition has been requested by the US on charges of conspiracy to export defence articles (night vision equipment) to Iran. His case has been subject to

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the full legal process, and he has exhausted all legal challenges against extradition (including the European Court of Human Rights). His surrender has been delayed pending receipt and consideration of reports on his health. As indicated previously, I have no general discretion in deciding whether extradition should proceed. I would only be able to refuse extradition on health grounds if I had evidence that extradition would be in breach of his Convention rights. Having considered these reports, my advice is that Tajik's health does not give me grounds on which to refuse extradition.

Iran takes this case extremely seriously. Your officials have provided advice as to the negative impact on bilateral relations between the UK and Iran if Tajik is extradited. I understand that this could include expulsion of our Ambassador and even attacks on our Embassy, with consequent danger to its staff. I have considered whether I have any discretion not to order Tajik's extradition on the grounds of national security, but the clear advice from the Law Officers is that no such discretion is available. They advise that, as Home Secretary, I am required to extradite Tajik and that any other decision would be unlawful.

The only circumstances in which Tajik's extradition would not now take place would be:

- (a) If his health were to deteriorate to the point where extradition would breach his Convention rights; or
- (b) If the US were to withdraw its extradition request.

While the effect of the advice from the Law Officers is that I must proceed with Tajik's extradition, in the light of the potentially very serious diplomatic implications of this course of action, I am willing to defer my decision for a short period in order to give you the opportunity to consider whether the diplomatic repercussions are so severe that you would wish to approach the US at a senior diplomatic level in order to ask them to withdraw their extradition request. If the consequences of Tajik's extradition are serious for

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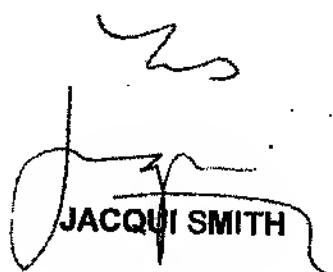
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the UK, then it seems likely that they would also affect US interests. This may have particular significance in the light of the imminent change of administration in the US; and you may wish to confirm with US officials from both administrations that they wish to pursue the request. If they do, I am under statutory duty to proceed with Tajik's extradition.

In view of the potentially very serious diplomatic consequences of a decision to proceed with Tajik's extradition I thought you would also wish to know that any such decision could be judicially reviewed by Tajik on human rights grounds. This would mean that the courts would, in effect, have the final say on whether there is any legal bar to his extradition.

I would be grateful if you would let me know whether you wish me to defer making a decision on extradition in order to allow you time to approach the US. I would be grateful for a reply by the end of January.

I am copying this letter to Patricia Scotland and Gus O'Donnell.



JACQUI SMITH

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Foreign &
Commonwealth

Office

London SW1A 2AH

From Private Secretary

2 February 2009

Dear [REDACTED]

Extradition of Nosratollah Tajik to the United States

1. I am writing in response to the Home Secretary's letter of 5 January regarding the extradition request from the United States for Nosratollah Tajik.
2. The Foreign Secretary was grateful for the Home Secretary's understanding of the particular difficulties that this case poses to the UK in terms of its bilateral relations with Iran. If anything these have worsened in recent months and we remain very concerned about the reaction of the Iranian authorities should the extradition go ahead. The Foreign Secretary believes that we should alert the new US Administration to this matter and ensure that they are aware of the possible ramifications of such a decision, both for us and also for their own interests, given the statements by President Obama regarding his willingness to consider a different relationship with Iran. While they may well conclude that the request must remain they should be aware of all the facts when doing so.
3. The Foreign Secretary would, therefore, wish the Home Secretary to defer her decision in order to allow time for such a discussion. We will endeavour to take this forward as quickly as is practicable but you will appreciate that normal business with the US is currently hampered by the process of transition to government. We will keep your officials informed of developments and write again as soon as we can.

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4. One issue that we would welcome Home Office advice on to inform our discussion with the US is our view on the strength of the case against Mr Tajik and the seriousness of the charge – this could be a relevant factor in their consideration of whether the balance is in favour or against maintaining the extradition request. Any assessment you had on that would be very helpful. As would clarification of one legal point: the Home Secretary states that all challenges are exhausted, including in the ECHR. Our understanding was that there was still a challenge lodged with them but that the ECHR had declined to order a stay of extradition while they considered it. Is that still the case?
5. I am copying this to Private Secretary/Baroness Scotland and [REDACTED] (Cabinet Office).

Yours ever

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The Private Secretary to the Home Secretary

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[REDACTED]
Private Secretary to the Secretary of State
for Foreign and Commonwealth Affairs
King Charles Street
London
SW1A 2AH

16 FEB 2009

J. Law

[REDACTED]

EXTRADITION OF NOSRATOLLAH TAJIK TO THE UNITED STATES

Thank you for your letter of 2 February.

The Home Secretary is most grateful to the Foreign Secretary for looking into this case. She will defer her decision on whether to proceed with Tajik's extradition pending the outcome of your discussions with the US. It would be very helpful if these discussions could take place urgently because, as matters stand, the Home Secretary remains under a legal duty to proceed with Tajik's extradition and reasonable cause must be shown for any delay.

You asked for advice on the strength of the case against Tajik and the seriousness of the charges against him. It is difficult for us to advise on these issues. Under the terms of our extradition arrangements with the US, the US is not required to provide *prima facie* evidence to establish Tajik's guilt; nor is the strength of the US case considered, beyond the fact that it discloses an extradition crime.

For information, the US charges against Tajik are as follows:

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- Conspiracy to knowingly and wilfully export defence articles, namely night vision equipment, from the United States to Iran, without first obtaining the required licence or written approval from the US Department of State
- Knowingly and wittingly attempting to export from the United States and re-export and re-transfer from one foreign destination to another foreign destination, namely from the United Kingdom to Iran, night vision equipment, US origin defence articles, without first obtaining the required licence or written approval from the US Department of State.

If Tajik were convicted on these charges, the maximum penalty is ten years' imprisonment or a fine of US \$1 million, or both.

You also ask for clarification of the position regarding Tajik's application to the European Court of Human Rights. As you say, the Court refused Tajik's application for a Rule 39 indication, which would have had the effect of staying his extradition. Tajik's substantive application to the Court remains outstanding.

I am copying this letter to the Private Secretary to Baroness Scotland and to [REDACTED] (Cabinet Office).

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